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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

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In The Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 98-82
	)	
Review of the Commission's Cable Attribution Rules	)	

COMMENTS OF RCN TELECOM SERVICES, INC.

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August 14, 1998

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RCN Telecom Services, Inc. ("RCN"), by the undersigned counsel, herewith respectfully submits its Initial Comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter.[1] In the NPRM, the Commission initiates review of its cable attribution rules in light of recent developments in the cable industry, particularly with respect to strategic alliances, system swaps, mergers and acquisitions among cable entities.[2]

The NPRM notes that the attribution standards applicable to those Commission rules designed to promote competition and diversity are less stringent than the standards applicable to Commission rules designed not only to promote competition and diversity, but also to deter anticompetitive conduct.[3] Specifically, the Commission seeks comment on the continued

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[1] *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Review of the Commission's Cable Attribution Rules*, Notice of Proposed Rulemaking, CS Docket No. 98-42, FCC 98-82, *rel.* June 26, 1998.

[2] NPRM at ¶ 16.

[3] *Id.*, at ¶¶ 3-6.

validity of its earlier decision to apply more restrictive attribution standards to conduct-based activities such as program access, as compared with the less restrictive rules which apply to structural limitations, such as limits on the horizontal concentration of cable systems and on the number of vertically-integrated channels.[4] The NPRM also seeks comment on whether the assumptions underlying the cable attribution rules remain valid and whether and how the more restrictive attribution standards applicable to program access, for example, should be reevaluated in light of the business arrangements involved in recent cable system partnerships, joint ventures, swaps, transfers, mergers and acquisitions.[5]

RCN urges the Commission to retain the more restrictive attribution rules for conduct-based activity, and also to apply such rules in the structural context, specifically with respect to the 30% horizontal ownership limitation on a cable operator's service to the universe of cable subscribers.[6] Indeed, for the reasons set forth in RCN's comments in the Commission's annual review of competition in video programming distribution markets[7] and the Commission's on-going review of its horizontal ownership limits,[8] RCN urges the Commission to adopt meaningful and significant limits on cable incumbents' clustering of cable systems, including restrictive attribution rules, so as to constrain the continued overwhelming market dominance of

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[4] *Id.*, at ¶¶ 4-5.

[5] *Id.*, at ¶¶ 13, 14 and 16.

[6] 47 C.F.R. § 76.503.

[7] Comments of RCN Telecom Services, Inc. in Docket No. 98-102, filed July 31, 1998 ("RCN Competition Comments").

[8] Comments of RCN Telecom Services, Inc. in Docket 92-264, filed August 14, 1998 ("RCN Horizontal Ownership Comments").

a relatively few multiple system operators ("MSOs"). As specified below, such limits should bar market shares in excess of 20% in any of the top 50 markets.

I. INTRODUCTION

RCN, alone and through various affiliations, is a facilities-based competitive provider of local exchange and long distance telephone services, high-speed Internet access, and traditional franchised cable and/or OVS services, primarily to residential subscribers. In video markets, RCN is the largest investor in and implementor of the open video system ("OVS") concept.[9] Alone or together with various affiliates, RCN is currently certified to provide OVS services in the metropolitan areas of Boston, MA,[10] New York City,[11] Washington, D.C.,[12] San Francisco, CA,[13] Philadelphia, PA,[14] and northern New Jersey.[15] Currently, RCN offers OVS service in

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[9] 47 U.S.C. §§ 573-575.

[10] *Memorandum Opinion & Order, RCN-BeCoCom-BETG, LLC, Certification to Operate an Open Video System*, 12 FCC Rcd 2480 (1997). RCN-BeCoCom, LLC is an enterprise which is 51% owned by RCN Corporation and 49% by BeCoCom, an unregulated subsidiary of the Boston Edison Company.

[11] *Memorandum Opinion & Order, Residential Communications Network of New York, Inc. Certification to Operate an Open Video System*, 12 FCC Rcd 2477 (1997).

[12] *Memorandum Opinion & Order, Starpower Communications, LLC, Certification to Operate an Open Video System*, 13 FCC Rcd 2169 (1998). Starpower is an enterprise jointly owned by RCN and an unregulated subsidiary of the Potomac Electric Power Company.

[13] *Memorandum Opinion & Order, RCN Telecom Services of California, Inc., Certification to Operate an Open Video System*, DA 98-1158, *rel.* June 15, 1998.

[14] *Memorandum Opinion & Order, RCN Telecom Services of Philadelphia, Inc., Certification to Operate an Open Video System*, DA 98-1155, *rel.* June 15, 1998.

[15] *Memorandum Opinion & Order, RCN Telecom Services of New Jersey, Inc., Certification to Operate an Open Video System*, DA 98-1530 (July 31, 1998).

portions of New York City and Boston, and will offer OVS services in several additional communities in the next few months.

These comments are offered from the perspective of an emerging entrant into video markets which faces pervasive and increasingly intense anticompetitive obstacles raised by the entrenched cable industry. RCN believes that the Commission must take a more active role in facilitating competition in video markets, and particularly OVS operators' entry, if Congress's vision for competition to the incumbent cable monopoly operators is to be fulfilled. The Commission is well aware that, notwithstanding the introduction of various forms of multichannel video programming distribution ("MVPD") competition in the last few years, incumbent cable operators remain overwhelmingly dominant in the video marketplace and are likely to retain that dominance for the foreseeable future.[16] According to the cable industry's own figures, cable operators account for approximately 86% of the total MVPD market.[17]

One important way to facilitate and foster competition would be the Commission's limitation of clustering and the reduction of the percentage of subscribers any one cable operator is allowed to serve. In its simultaneously-filed comments in the Commission's proceeding concerning the cable horizontal ownership limit, RCN recommends that the Commission reduce the nationwide percentage from 30% to 20% and that ownership within clusters be separately

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[16] *Fourth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 97-423, CS Docket No. 97-141, *rel.* January 13, 1998, at ¶¶ 126, 128 and 150.

[17] *See* Testimony of Leo J. Hindery, President of TCI, before the Senate Committee on Commerce, Science and Transportation, July 28. 1998; *see also* NCTA Comments in Docket No. 98-102, July 31, 1998 at 6.

limited.[18] In the instant proceeding, RCN similarly recommends that, in light of the growing tendency of the largest MSOs to cluster and concentrate their subscribers in a limited number of markets, the Commission must apply the more restrictive cable attribution standards so as to assure that any ownership limits established in the Commission's horizontal ownership docket are not rendered nugatory by the cable industry's reliance on the more relaxed attribution rules which currently apply to the structural limitations on cable operators' activities. Moreover, under no circumstances should the Commission alter its rules in a manner that would permit the cable industry to further concentrate marketplace control in the hands of a relatively few cable companies.

II. BACKGROUND

Together with its corporate parent, RCN Corporation, RCN's capital budget in 1998 and 1999 for all of its telecommunications activities will be approximately $850 million. RCN has approximately 658,000 subscriber connections delivered through a variety of owned and leased facilities.[19] RCN's business plan emphasizes the residential market and is structured to offer consumers a combination of local exchange and long distance telephone service, high-speed

[18] RCN Horizontal Ownership Comments at 19-20.

[19] A "connection" for this purpose is a unit of service, such as a local telephone line, Internet customer, or a video services customer. As of March 31, 1998, RCN had approximately 15,600 subscribers to its OVS service, approximately 40,860 connections attributable to its wireless video systems and approximately 187,000 connections attributable to its traditional cable systems.

Internet access, and traditional cable or OVS services in one bundled offering. Generally, RCN offers these services, both in a package or individually, at rates lower than RCN's competitors.[20]

With respect to video programming, RCN currently offers OVS services in portions of Manhattan and Boston, and will do so in two Boston suburbs (Arlington and Newton) in a few months.[21] RCN deploys fiber optic cable except in special situations in Manhattan where RCN delivers its video services by microwave on an interim basis until fiber optic cable can be deployed there. The systems are designed for analog transmission although the company plans to migrate to digital as soon as the economics of doing so become more attractive. RCN offers a full line-up of up to 110 channels of high quality basic, premium and pay-per-view video programming.[22] As demonstrated in the representative rate comparisons contained in an exhibit hereto, RCN's video offerings are superior and less expensive than those of the incumbents.

RCN's OVS certification for the Boston area encompasses the City of Boston and more than 40 surrounding communities.[23] RCN currently provides service to some 8,500 subscribers in the City of Boston. While some of these subscribers take only OVS service, most take the three-way combination of voice, video and data. RCN's major competitors in the Boston area

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[20] For example, RCN's competitive local exchange service is generally priced 5% less than the incumbent local exchange carrier's.

[21] RCN expects to sign an OVS agreement with the town of Waltham, MA in the coming weeks.

[22] RCN also offers the latest "impulse" technology which allows convenient impulse pay-per-view ordering of movies and special events using a customer's remote control.

[23] Subsequently, to fulfill the preferences of local regulators, RCN secured traditional cable franchise agreements in a number of these communities, including Somerville and Framingham, and expects to negotiate franchises in additional municipalities.

market are Time Warner Cable Co., which serves approximately 270,000 subscribers,[24] Cablevision Systems Corp., with approximately 345,000,[25] and MediaOne, Inc., with approximately 199,000 subscribers.[26] Combined, these incumbents serve the large majority of the households in RCN's service area.

In New York City, RCN provides video programming service to over 40,000 subscribers located primarily in Manhattan and recently has agreed with municipal regulators to expand its services into the other boroughs. At present, RCN delivers its offerings largely over microwave facilities acquired from a predecessor in interest, but is actively installing fiber optic distribution facilities. RCN's competitors in New York include Time Warner in Manhattan and Cablevision in other boroughs and in numerous New York City suburbs.

In both of these markets RCN has encountered anticompetitive tactics by the incumbent cable operators designed to thwart RCN's efforts to provide a competitive service or to make doing so unnecessarily expensive or time-consuming. RCN also has experienced an orchestrated campaign by two of the incumbent franchisees in the Boston market that has included almost every conceivable legal and regulatory device to block its path. RCN does not expect entrenched monopolists to welcome competition; this would be contrary to all experience and is simply unrealistic.[27] On the other hand, the questions posed in the Further Notice compel RCN to make

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[24] *See* www.pathfinder.com/corp/fhook/fbcable.html.

[25] *See* www.cablevision.com/cvhome/cvabout/finance.html.

[26] Source: Commonwealth of Massachusetts, Department of Public Utilities, Cable Television Division, Cable System List Database.

[27] *See Predation In Local Cable TV Markets*, Antitrust Bulletin, 9/1/95 by T.W. Hazlett: "Cable television operators pursue a predictable set of reactions... to a potential CATV entrant.. .

the Commission aware of the anticompetitive campaign to which RCN has been subjected by the incumbent cable industry. [28]

The Commission does not need to be persuaded that competition in the video marketplace is both desirable and necessary. The continuous increase in customers' cable rates, typically well in excess of inflation, is a constant topic of concern.[29] The Commission should be aware, however, that RCN's entrance into certain markets has caused cable operators to exercise dramatic restraint in certain instances. For example, in late 1997, Time Warner announced that new rate increases in the range of 10% to 15% would take effect throughout the Boston area,[30] except in Somerville, where RCN provides the first competitive cable service in Massachusetts and one of the first such services in the country.[31] Similarly, in the City of Boston, Cablevision

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beginning with a vigorous lobbying campaign to deny entry rights... selective price cutting, preemptively remarketing the first submarkets to be competitively wired... tying up cable network programming... delaying access to ... poles and/or underground conduits... and creating customer confusion...." *Id.* at 11.

[28] In its recently filed comments in the Commission's annual assessment of the status of competition in video markets, RCN described at length the multitudinous and seemingly unending pleadings filed by cable operators seeking to impede RCN's progress. See Comments of RCN Telecom Services, Inc., Docket No. 98-102, filed July 31, 1998.

[29] *See, e.g.*, Communications Daily, July 15, 1998, p. 2, reporting recently released CPI data showing cable rate increases of 7.3% over the previous 12 months as compared with a 1.7% inflation rate. Cablevision's own Internet homepage show an increase in the recurring average monthly revenue per subscriber from $38.53 in December 1997 to $41.65 in March 1998, or an increase of more than 8% (http://www.cablevision.com/cvhome/cvabout/finance.htm). *See also* Letter from the Utility Consumers' Action Network to the Honorable Senator John McCain, July 23, 1998, reporting cable rates increases from 1996 to 1998 for: Cox (65% for basic); Southeastern (21% for expanded basic); and Daniels (25% for expanded basic).

[30] *Boston Globe*, December 21, 1997 (WL 6286769).

[31] *Boston Globe*, November 26, 1997 (WL 6282146). In fact, a cable company executive stated that the company is "looking at a whole new competitive pricing system" and "facing how

raised its rates only 2.5%. In New York City, Time Warner has implemented an aggressive bulk discount program in many of the multiple dwelling unit buildings ("MDUs") where RCN offers competitive video programming.

The NPRM seeks information on clusters and on cable mergers or swaps.[32] It is therefore instructive to consider the competitive situation of the OVS model in New York City, the largest and most important media market in the country and where only a few months ago one of the largest cable swaps in history took place. There, Cablevision recently acquired 845,000 subscribers from Tele-Communications, Inc. ("TCI").[33] As a direct competitor of Cablevision in New York, RCN is alarmed at this latest development. Cablevision is the sixth largest cable operator in the United States with approximately 3.37 million subscribers.[34] Prior to the Cablevision/TCI acquisition, Cablevision had approximately 440,000 subscribers in the Bronx and Brooklyn and 50,000 in Yonkers. Cablevision serves about 200,000 subscribers in Connecticut and has entered into arrangements to acquire an additional 250,000 Connecticut

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we deal in a competitive environment for the first time." *See also En Banc* Presentation on the Status of Competition in the Multichannel Video Industry, December 18, 1997, at pp.24-30. In Somerville, as in a few other municipalities, RCN offers video programming as a traditional franchised cable operator to fulfill the preferences of local regulators.

[32] NPRM at ¶ 16.

[33] In exchange for its New York area subscribers and some additional subscribers elsewhere, TCI acquired a 36% equity interest in Cablevision. *See, e.g.*, *Management, Strategies, Trends*, Forbes Magazine, July 27, 1998.

[34] 1997 Competition Report at ¶ 197 and Table E-3. The Commission's data fail to reflect Cablevision's recent acquisition of additional subscribers from TCI in the New York area and elsewhere. The 3.37 million figure is taken from Cablevision's Internet homepage, where Cablevision itself reports the acquisition of 829,000 TCI subscribers.

subscribers from TCI,[35] bringing Cablevision's subscribership in the New York-Connecticut area to more than 2.6 million cable customers, or the largest cable cluster in the nation.[36] Cablevision also owns one of the largest program suppliers in the nation, Rainbow Programming, L.P., and a controlling interest in Madison Square Garden, L.P. ("MSG"), which includes the arena complex, two professional New York sports teams, and Radio City Productions,[37] and the MSG channel, which reaches some 5 million subscribers.[38] As a vertically integrated entity from top to bottom,[39] Cablevision by any measure is a major factor in the New York area MVPD marketplace and has the ability to significantly impede competition in that market.

Nevertheless, the Federal Trade Commission ("FTC") decided to permit the Cablevision/TCI acquisition.[40] In fact, the FTC concluded that the proposed acquisition would be anticompetitive without the parties' agreement to minor cable divestitures.[41] The FTC's

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[35] Cablevision Press Release dated January 27. 1998. To RCN's knowledge, this proposed acquisition has not yet been submitted to the Connecticut Department of Public Utility Control for approval.

[36] The same figure is quoted in Cablevision's description of the acquisition on its Internet homepage; *see also* 1997 Competition Report at ¶ 85

[37] *See* Cablevision News Release of Dec. 3, 1997. Rainbow Media Holdings, Inc. and Fox/Liberty Networks have formed a national sports programming venture which will reach 55 million homes. Cablevision News Release dated June 23, 1997.

[38] New York Times News Service, Friday, March 20, 1998 (WL-NYT 9807901206).

[39] Cablevision thus owns the arena (Madison Square Garden), the program content (the Knicks and Rangers), program services (MSG and Sports Channel Networks) and the cable systems transmitting the content. *See* 1997 Competition Report at ¶ 93.

[40] *In the Matter of Cablevision Systems Corporation*, File No. 971-0095, 63 FR 5545 (1998) ("FTC Notice")

[41] *Id.*

decision concerning the Cablevision/TCI acquisition observes that the FTC does not consider multichannel video programming technologies other than cable television, *e.g.*, direct broadcast satellite and wireless cable, to be part of the relevant market for antitrust analysis because "they do not have a significant price-constraining effect on the prices charged by cable operators to subscribers."[42] Thus, the FTC deemed irrelevant the interactions among Cablevision and other MVPDs in the New York City area market. Indeed, OVS is not even mentioned.

III. THE COMMISSION MUST PROHIBIT CLUSTERING AS IN THE NEW YORK CITY MARKET

In light of the present state of the MVPD industry – approximately 86% dominance by the incumbent cable industry -- the Commission must give careful thought to remedial regulatory measures.[43] The Communications Act grants the Commission broad authority to establish limits on the number of cable subscribers any one cable operator can reach.[44] Among the important public interest factors that the Commission should consider in this proceeding, RCN urges the Commission to give substantial weight to constraining the anticompetitive incentives of cable operators with large scale operations. RCN's experience is that incumbent cable operators do not hesitate to stall competition at its inception, but later, once competition is inevitable, will respond by lowering rates to reasonable levels (typically for the first time) in those particular franchise areas where a competitor has entered, but not in the bordering franchise areas where

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[42] FTC Notice at III.

[43] *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, CS Docket No. 97-141, 13 FCC Rcd 1034 (1998) ("Fourth Annual Competition Report") at Appendix E.

[44] 47 U.S.C. § 533(f)(1)(A).

competition is not yet present. Specifically, in RCN's 18 months of experience in actively deploying OVS services, it has learned that cable giants including Time Warner Cable and Cablevision Systems are all too ready to use their overwhelming resources and market dominance to thwart competitive entry, but later reluctantly will establish rate discounts and other marketing programs designed to combat the competitive effects of RCN's entry.

RCN recognizes that large scale operations can produce economies of scale that incumbent cable operators often claim are essential to providing modern technology and improved services to their viewership.[45] RCN believes, however, that serious flaws exist in this much-repeated mantra. First, no objective, verifiable or even convincing evidence exists that the scale of operations anticipated by TCI, for example, is essential to procure and deploy modern physical plant. For example, an entity as modest in size as RCN is in the process of installing hundreds of miles of state-of-the-art fiber optic plant without charging excessively high customer rates[46] and without concentrations of millions or even hundreds of thousands of subscribers. Second, as RCN has experienced, instead of fostering innovation and improved services, large scale operations only increase incentives for cable incumbents to protect their monopolies by

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[45] *See, e.g.,* Testimony of Leo J. Hindery, President of TCI, before the Senate Committee on Commerce, Science and Transportation, July 28, 1998 at 4-5; TCI Opposition to Petitions for Reconsideration of In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal Ownership Limits, *Second Report and Order*, 8 FCC Rcd 8565 (1993) at 2-3.

[46] See tables comparing rates charged by RCN and incumbent cable operators in the Boston area, attached hereto as an exhibit.

raising entry hurdles so high that new entrants are intimidated.[47] The cable incumbents in RCN's existing and future service areas have subjected RCN to unending challenges, which, although they have not yet driven RCN from its goal of offering consumers a competitive choice, may be stalling initiatives by others.[48]

Third, as described at length in initial comments in the Commission's video competition proceeding, cable rates continue to rise at an unreasonable pace.[49] Fourth, cable's competitors, including DBS, MMDS, SMATV and OVS, individually and collectively pose little threat to the cable industry's market dominance for the foreseeable future.[50] Thus, the MVPD market remains overwhelmingly dominated by cable incumbents, and that dominance must be constrained if the public's interest in the benefits of competition is to be served.

Unhindered by Commission regulation, the nation's largest and sixth largest MSOs, TCI[51] and Cablevision, respectively, recently combined their cable resources in the New York market reducing the level of MVPD competition in the region while significantly enhancing the market dominance of Cablevision. Specifically, TCI acquired a 36% equity ownership position in

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[47] Naturally, RCN does not allude here to competitive price reductions or service improvements which, so long as they are not predatory, constitute fair competition and serve the public interest.

[48] *See* note 27, *supra*.

[49] *See, e.g.*, Ameritech Comments in CS Docket No. 98-102 at 6-9; RCN Comments in CS Docket No. 98-102 at 7.

[50] *See, e.g.*, NCTA Comments in Docket No. 98-102, filed July 31, 1998 at 6 (showing that all of the cable industry's competitors collectively serve only 15% of MVPD subscribers).

[51] If TCI's present plans for restructuring are successful, it will have direct and attributable interests in 36% of the nation's cable subscribers. See Comments of Ameritech New Media, Inc. in Docket No. 98-102, filed July 31, 1998 at 4.

Cablevision in exchange for some 845,000 TCI subscribers located largely in the New York metropolitan market.[52] Such a large position in Cablevision clearly would give TCI an immensely important voice in the determination of Cablevision's business plans. Given TCI's and Cablevision's substantial programming interests, this combination constitutes an extremely dangerous degree of both horizontal and vertical market concentration to the detriment of consumers. Moreover, the TCI/Cablevision swap, however dramatic, is merely emblematic of the general tendency among the large cable MSOs to establish large clustered operations. As TCI itself notes, TCI's corporate policy calls for the trimming of its customer base by 30% to 10.5 million subscribers while concentrating 64% of those subscribers within only 10 markets.[53] In recent testimony before the Senate, a TCI representative indicated that clustering is an important element of the company's overall strategic planning.[54] Clustering is not confined to TCI and Cablevision, however. 78% of Time Warner's 12 million subscribers are located within 34 clusters of 100,000 or more customers,[55] while 97% of Cablevision's 3.373 million subscribers are located within only three clusters: New York, Boston and Cleveland.[56]

RCN notes that the Federal Trade Commission did not find that the TCI/Cablevision combination in New York posed a significant risk of an antitrust violation, apart from a minor overlap of cable systems in suburban New Jersey. However, this Commission has broader

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[52] *Management, Strategies, Trends*, Forbes Magazine, July 27, 1998.

[53] *See* http://www.tci.com/tci.com/AnnualReports/ reportsframe.html.

[54] *Id.*

[55] *See* http://www.pathfinder.com/corp/fbook/fbcable.html.

[56] *See* http://www.cablevision.com/cvhome/cvabout/aboutovr.html.

concerns and broader powers. For example, Section 613 of the Communications Act calls on the Commission to enhance effective competition in the cable industry by prescribing "rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person or in which such person has an attributable interest."[57] In fashioning such rules, the Commission is statutorily obligated to "take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests."[58] Accordingly, the Commission possesses all the authority it requires to develop policies limiting the extent to which cable MSOs can attempt to enhance their dominance of regional MVPD markets by clustering their holdings.

RCN believes that, if the adoption of such limits lead to cable operators' divestitures of certain systems, many of these divestitures will involve a swap of a smaller cable system's subscribers in less concentrated markets in exchange for those of larger cable systems within larger urban areas, or the exact opposite of the current trend. Such a development would do a great deal to constrain the dominance of the relatively few cable incumbent that currently control the video marketplace, open many markets to a multitude of smaller cable and non-cable competitors, and thereby enhance competition to the benefit of consumers.

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[57] 47 U.S.C. § 533(f)(1)(A).

[58] 47 U.S.C. § 533(f)(2)(C).

RCN believes that it is important to the Commission's review of its cable attribution rules to begin consideration of limiting cable clustering. As an initial suggestion, RCN recommends that the Commission consider adopting rules prohibiting ownership or control of cable systems passing more than 20% of the total homes passed in any of the top 50 television markets. Such a limitation would have the effect of forcing the larger cable companies to divest significant portions of their systems, undoubtedly selling off or trading systems with smaller cable operators. The effect of this restructuring would be to disperse subscribership in the largest markets and thereby constrain the dominance of the major cable companies. An alternative approach might be to specify that no cable company could pass more than 10% of the homes passed in more than one of the top10 or more than three of the top 25 markets.

Both limitations could be imposed so as to limit ownership by the largest companies in the biggest markets while also diversifying ownership in the smaller but still significant markets.[59] Ownership or control should be defined to include attributable interests as currently applied by the Commission to its conduct-oriented cable attribution rules (*i.e.*, program access) rather than the less confining attribution standards applied to structural limitations, such as the Commission's horizontal ownership limit. Such a standard rightly would have barred Cablevision's acquisition of its overwhelmingly dominant position in the New York market by

[59] RCN does not specifically address herein the impact of its proposals on 47 C.F.R. § 76.503(b) which provides that cable companies can pass an additional five percentage points of the market if such additional cable systems are minority controlled. RCN strongly supports the goal of encouraging minority ownership both on its merits and as one way to encourage diversity and diffusion of ownership. In any of the alternative policy formulations set forth herein, therefore, RCN would anticipate that the principle represented in that provision would be incorporated, albeit on a proportional basis.

blocking the conjunction of TCI's and Cablevision's economic power in the market achieved through TCI's acquisition of more than one-third of Cablevision's equity. It also would have required that TCI divest its $4 billion investment in Time Warner, the other major cable multiple system operator ("MSO") in the New York market.

IV. CONCLUSION

The marketplace behavior of the cable industry, led by the large cable MSOs, continues to be characteristic of entrenched monopolists. Prices continue to rise at rates in excess of the inflation rate, dissatisfaction with cable service continues to be a problem nationwide, and those entities which dare to enter the MVPD market are subjected to barrages of anticompetitive activities. RCN believes that, until cable service prices and service quality conform to the normal strictures and behavior of competitive markets, the Commission has an affirmative obligation – and all the authority it needs – to require the massive cable MSOs to divest their large scale market concentrations, including the holding of "minority," "passive," "non-voting," or other allegedly non-influential interests.

Respectfully submitted,

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August 14, 1998

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EXHIBIT

Comparisons of Video Programming Rates Charged by RCN and Cable Incumbents

Hudson Rate Comparison

	Cablevision	RCN	RCN+Phone
Basic service	50 channels	80 channels	80 channels
Family Package	31.30	24.95	19.97
Converter	1.17	not required	not required
remote	0.19	not required	not required
expanded package/Disney	8.95	included	included
Total	41.61	**24.95**	**19.97**
Savings %		**40%**	**52%**

Braintree Rate Comparison

	Cablevision	RCN	RCN+Phone
Basic service	63 channels	80 channels	80 channels
Standard Package		27.95	24.95
Broadcast Basic (21 Channels)	10.45		
Family Cable (34 Channels)	17.82		
Disney	10.95	no additional charge	no additional charge
ESPN2	1.95	no additional charge	no additional charge
History Channel	1.95	no additional charge	no additional charge
sub-total	43.12	27.95	24.95
Converter	1.17	not needed to view basic service	
Remote control	0.19	not needed to view basic service	
Total	44.48	**27.95**	**24.95**
Savings %		**37%**	**44%**

Newton Rate Comparison

	Media One	RCN	RCN+Phone
Basic service	57 channels	80 channels	80 channels
Standard Package	29.63	24.95	19.97
Converter	2.19	not required	not required
Remote control	0.30	not required	not required
Expanded package(+6CH)*	3.95	included	included
Total	36.07	**24.95**	**19.97**
Savings %		**31%**	**45%**

Expanded Package 6 Channels

*FOX Movies**
*Bravo**
*The History Channel**
*SCI-FI**
*Cartoon Network**
*Comedy Central**

Watertown Rate Comparison

	Media One	**RCN**	**RCN+Phone**
Basic service	57 channels	80 channels	80 channels
Standard Package	27.54	24.95	19.97
Converter	2.19	not required	not required
Remote control	0.30	not required	not required
*Expanded package**	3.95	included	included
Total	33.98	**24.95**	**19.97**
Savings %		**27%**	**41%**

Expanded Package 6 Channels

*FOX Movies**
*Bravo**
*The History Channel**
*SCI-FI**
*Cartoon Network**
*Comedy Central**

		Channel Comparison Weymouth				
Animal Planet	1			NESN	51	Cartoon Network
WGBH-PBS	2	WGBH-PBS		Sports Channel	52	TV Land
SCI-FI	3	Local Access		Speedvision	53	SCI-FI
WBZ-CBS	4	WBZ-CBS		The Golf Channel	54	Comedy Central
WCVB-ABC	5	WCVB-ABC		TNN	55	E!
NE Cable News	6	WFXT-FOX		Boston Catholic/Inspirational	56	A&E
WHDH-NBC	7	WHDH-NBC		QVC	57	Discovery Channel
Product Info Network	8	reserved		Prevue Guide	58	Learning Channel
Outdoor Life	9	WGN		AMC	59	History Channel
Community Television	10	WLIV		HBO	60	Home&Garden
	11	WSBK		Cinemax	61	TV Food Network
WLVI	12	WABU		Pay-Per-View 1	62	Turne Classic Movies
WFXT-FOX	13	WTBS		HBO2	63	FOX Movies
WSBK	14	WGBX-PBS		HBO3	64	Ovation
WABU	15	Prevue Channel		Starz!	65	Bravo
WGBX	16	Sneak Preview		Encore	66	TMC
WUNI	17	WUNI		PPV3	67	Romace Classics
WNDS	18	C-SPAN		PPV4	68	Sundance
WHRC	19	C-SPAN 2		FOX Movies	69	EWTN
WMFP	20	reserved		Bravo	70	Star Cinema* 1 PPV
WHSH	21	WMFP		History Channel	71	Star Cinema* 2 PPV
Wetmouth Shools	22	WHSH		SCI-FI	72	Spice*
Value Vision	23	QVC		Cartoon Network	73	America's Health
Disney Channel	24	Sports Channel NE		Comedy Central	74	Game Show Network
Nickeleon	25	CNN/SI		The Movie Channel	75	Travel Channel
Family Channel	26	ESPN		Adult PPV/PPV B	76	International Channel
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FX	30	NESN*		Showtime	79	CMT
USA	31	TNN			80	VH1
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TNT	33	CNN			82	BET
E!	34	Headline News			83	reserved
WTBS	35	CNN/fn			84	reserved
Lifetime	36	Bloomberg TV			85	reserved
A&E	37	CNBC			86	reserved
Learning Channel	38	Court TV			87	reserved
Home & Garden	39	Weather Channel			88	reserved
Court TV	40	The Family Channel			89	reserved
FOX News	41	USA			90	reserved
CNN	42	Lifetime			91	HBO3*
Headline News	43	TNT			92	HBO West*
C-SPAN	44	HBO*			93	Showtime*
C-SPAN 2	45	HBO2*			94	The Movie Channel
CNBC	46	HBO Family*			95	Starz
Weather Channel	47	Cinemax*			96	Encore
Classic Sports Network	48	Cinemax* 2			97	Star Cinema* 3

ESPN	49	Nickelodeon			98	Star Cinema* 4
ESPN 2	50	Disney Channel			99	Star Cinema* 5
					100	Adam & Eve